

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

SEBERGAN PIGS, INC.
Lee County; ID 60439

**ADMINISTRATIVE CONSENT
ORDER
NO. 2007-AFO-18**

TO: Sebergan Pigs, Inc.
c/o Howard Holtkamp
1274 HWY 218
West Point, IA. 52656

I. SUMMARY

This Administrative Consent Order (Order) is entered into between Sebergan Pigs, Inc.(Sebergan) and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to manure control. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

Relating to technical requirements:

Mark Heiderscheit, Ryan Stouder
Field Office No. 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1123
Ph: 319-653-2135

Relating to legal requirements

Randy Clark, Attorney II
Iowa Department of Natural Resources
Wallace State Office Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8891

Payment of penalty to:

Iowa Department of Natural Resources
Wallace State Office Building
502 East 9th Street
Des Moines, Iowa 50319-0034
Attn: Randy Clark

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II. JURISDICTION

This Order is issued pursuant to the provisions of Iowa Code subsection 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, Iowa Code chapter 459, subchapter III, and the rules adopted or permits issued pursuant thereto; and Iowa Code sections 455B.109 and 459.103(3), and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. At all times relevant to this Order, Sebergan owned and operated a swine confinement operation located in Section 1, Marion Township (T69N, R6W), Lee County, Iowa. The operation has a capacity of 900 sows (360 animal units) and utilizes a two-cell unformed manure storage structure.

2. On August 11, 2004, Administrative Order No. 2004-AFO-89 was issued due to the failure to maintain the unformed manure storage structure and due to freeboard violations in 2002, 2003 and in June, 2004. Among other things, said Order required Sebergan to comply with the freeboard requirement at all times and to comply with manure management plan requirements normally only required for operations with a capacity larger than 500 animal units.

3. On December 30, 2004, Field Office 6 (FO6) staff conducted a routine earthen manure storage inspection and observed that freeboard in the unformed structure was less than two feet. A Sebergan official explained that efforts were under way to pump down the unformed structure but that a late start that fall and wet weather had caused the violation.

4. On March 15, 2005, FO6 staff investigated a complaint that manure was discharging to a stream from a tile line outlet near a field where manure from the Sebergan operation was being land-applied. Pinkish-colored liquid with a manure odor was discharging from the tile line outlet into an unnamed Sugar Creek tributary. Flow in the tributary was also pinkish in color and this condition was observed downstream of the tile outlet for approximately ½ mile. Upstream of the tile line outlet flow in the tributary was also pinkish in color and FO6 staff surmised that other tile line outlets may have been discharging into the stream but they could not be located. Pinkish colored liquid was ponded in the field where manure from the Sebergan operation had been applied. At the Sebergan operation, the unformed manure storage structure did not have the required two feet of freeboard and the manure in the structure was pink in color, matching the color of the manure observed at the land application field and at the tile line outlet. The manure management plan (MMP) for the operation did not include the fields where manure had been applied and manure application records were not available.

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5. On February 17, 2006, while conducting a routine unformed manure storage structure and MMP compliance inspection, FO6 staff observed compliance with freeboard requirements. However, MMP deficiencies were documented.

6. During an inspection on April 6, 2006, FO6 staff observed that the unformed manure storage structure had less than the required 2 feet of freeboard.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Since no such permit has been issued for this facility, the foregoing facts establish that this provision has been violated.

2. Iowa Code section 459.103 requires the Environmental Protection Commission to adopt rules related to the construction or operation of animal feeding operations, including minimum manure control requirements. The Commission has done so at 567 IAC chapter 65.

3. Iowa Code subsection 459.311(2) and 567 IAC 65.2(7) require that all manure removed from an animal feeding operation or its manure control facility be land applied in a manner which will not cause surface or groundwater pollution. The foregoing facts establish that these provisions were violated.

4. 567 IAC 65.2(3)"b" and "c" require that manure be removed as necessary to maintain a freeboard of at least two feet in earthen manure storage structures; and that manure be removed as needed prior to periods when manure application cannot be conducted (due to inclement weather conditions, lack of available land disposal areas, or other factors) in order to assure that adequate capacity exists in the manure storage facilities. The foregoing facts establish that these requirements were violated.

5. 567 IAC 61.2(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.

6. Iowa Code section 459.312(3) and 567 IAC 65.17(12) and (13) require the owner of a confinement feeding operation to maintain a current MMP and records demonstrating compliance with the MMP at the site of the operation. Iowa Code section 459.312(10)(d) and 567 IAC 65.17(8) require that manure application agreements for all land where manure will be applied be maintained with the current MMP. The above-summarized facts document that the foregoing statutory and rule provisions have been violated.

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7. 567 IAC 65.5 provides that the Department may evaluate any animal-feeding operation to determine if manure from the operation: is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control; is causing or may reasonably be expected to cause pollution of a water of the state; is causing or may reasonably be expected to cause a violation of state water quality standards. If any of these conditions exist, the operation is required, upon notification from the Department, to apply for an operation permit (subject to animal capacity limitations) and institute necessary remedial actions to eliminate the conditions. Based on the foregoing facts and conclusions, the Department further concludes that one or more of the above-described conditions existed at this facility and Sebergan is hereby notified that it must conduct remedial actions as specified in section V(1), below.

V. ORDER

THEREFORE, the Department hereby orders and Sebergan consents to do the following:

1. By July 15, 2007, determine by survey the lowest point in the berm of each basin cell and establish a permanent measurement device in each cell to conveniently observe freeboard with respect to each low point. Thereafter, use the measurement devices to monitor freeboard as required in paragraph 2, below.

2. Commencing with records collected on and after August 1, 2007, submit to Department Field Office #6 at the address on page 1 of this Order a quarterly report by the 15th of the month following the end of each calendar quarter (the first report will be due October 15, 2007) with the following information:

- ◆ Keep written records of weekly freeboard measurements and when manure is removed from your outside manure storage basin and include this on the quarterly report to Department Field Office #6.
- ◆ If you land apply your manure using your own machinery you must conduct weekly inspections, while in use, of your manure handling equipment. You must record in the quarterly report any deficiencies and the corrective actions that you took as soon as possible. Any manure laden water generated from the cleaning of this equipment must be collected and properly land applied.
- ◆ You must monitor the tile outlets for obvious signs of manure discharge to a stream from your land application areas before and after each manure application. Your observations must be recorded in the quarterly report.
- ◆ Maintain on site for a period of five years from the date they are created a complete copy of the above-required monitoring records.

3. Pay an administrative penalty of \$7,500.00. The penalty shall be paid to the Department within 14 days of the date the Director signs this Order.

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VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day for each violation of water quality laws, regardless of fault; more severe criminal sanctions are also provided for negligent and intentional violations.

2. Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$7,500.00 is assessed. The penalty shall be paid within 14 days of the date the Director signs this Order. The administrative penalty is determined as follows:

a. Economic Benefit. Sebergan saved time and resources by not maintaining the required freeboard and MMP records. It is estimated that this savings is at least \$1,500 and that amount is assessed for this factor.

b. Gravity of the Violations. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. This matter involves threatened harm to the environment due to the freeboard violation and actual harm to the environment due to the manure discharge and the resulting water quality violation. Further, the seriousness of this matter is exacerbated because the freeboard violation is a repeated violation and because it violates a previous Order. Multiple rule and statutory provisions were violated: three failures to maintain the required freeboard, discharge of manure to water of the state, violation of water quality standards and three MMP violations. \$3,000.00 is assessed for this factor.

c. Culpability. Sebergan has been negligent in repeatedly failing to comply with freeboard requirements despite numerous directives and a previous Order from the Department. \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

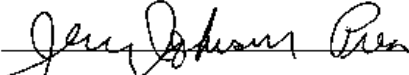
Iowa Code section 455B.175(1), and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This Order is entered into knowingly by and with the consent of Sebergan. By signature to this Order, all rights to appeal this Order are waived by Sebergan.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties

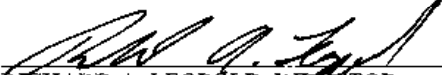
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pursuant to Iowa Code sections 455B.191 and 459.603. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Division IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.


SEBERGAN PIGS, INC.

Dated this 6 day of

June, 2007.


RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 15 day of

June, 2007.

Field Office 6; Randy Clark; Gene Tinker; EPA; VIII.C.2&3, D.1.a, D.2.a, D.3.a